

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

In the Matter of U.S. Borax, Inc. (U.S. Borax),)
Operator of the U. S Borax Boron Facility and)
Surface Impoundments (Discharger): Discharge)
of Waste in Violation of § 13264(a), and)
§ 13267(b)(1) of the California Water Code)

**COMPLAINT NO. 6-98-22
FOR ADMINISTRATIVE
CIVIL LIABILITY**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are charged with a violation of provisions of law, or orders of the California Regional Water Quality Control Board, Lahontan Region (Regional Board), for which the Regional Board may impose civil liability pursuant to § 13265(c) and § 13268(c) of the California Water Code.
2. Unless waived, a hearing on this matter will be held before the Regional Board within 60 days of the issuance of the Complaint. You, or your representatives, will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda showing the time set for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. You are alleged to have violated the following sections of the California Water Code:

§ 13264(a) - No person shall initiate any new discharge of waste or make any material changes in any discharge prior to filing a report of waste discharge.

U. S. Borax' discharge of sulfuric acid to Pond 6 initiated a new discharge not authorized by existing waste discharge requirements. U. S. Borax did not file a report of waste discharge before initiating the material change in its discharge.

§ 13267(b)(1) - The regional board may require any person who has discharged waste to furnish technical or monitoring program reports.

U. S. Borax' existing waste discharge requirements require notification of the Regional Board within 24 hours, and written confirmation within two weeks, of the occurrence of any adverse condition. An adverse condition includes, but is not limited to, discharge of toxic chemicals that could affect compliance. U.S. Borax notified the regional board 29 days after the discharge occurred.

5. The facts providing the basis for the alleged violations in this matter are given below.
Discussion of Incident

U. S. Borax discharged 7,000 gallons of commercial grade sulfuric acid (98 % sulfuric acid, pH of 0.9) to the onsite Boric Acid Pond. The Borax Plant was shut down for approximately two weeks at the end of the year. -The incident occurred on three days, December 22, 23 and 26, 1997.

The maintenance personnel were to perform routine maintenance on the Boric Acid Plant sulfuric acid storage tank, but found that the tank had not been emptied in preparation. As a result, the sulfuric acid in the tank was drained, and the acid was transported and discharged to the onsite Boric Acid Pond. The acid was mingled with sump water and process liquor, and was discharged to the northeast corner of the pond. U. S. Borax reported the incident verbally to Regional Board staff on January 20, 1998. A written report describing the incident was submitted by U.S. Borax on January 23, 1998. U.S. Borax performed pH analysis of samples of Boric Acid pond water on January 19, 1998. The samples showed the pond water varied from a pH of 7.4 to 7.8

Costs of Disposal

The discharger may have realized an economic benefit as a result of the violation in that the discharger did not have to retain a storage facility to store the acid and/or the discharger did not have to arrange and pay for a licensed hazardous waste hauler to transport and dispose of the sulfuric acid while repairs were made to the regular sulfuric acid storage tank, or suffer delay while it was drained according to law. -The discharger did lose the use of the sulfuric acid when it was discharged to the pond, but that value is small in comparison to the savings it enjoyed by using improper disposal or avoiding delay.

U. S. Borax submitted information to show that recycling of sulfuric acid by its contract hazardous waste treatment, storage and disposal company, All Waste, in Long Beach, California would cost approximately \$28,000 dollars. Staff independently researched a comparison discharge of 7,000 gallons of sulfuric acid to a hazardous waste treatment facility. Results indicated that costs would be in the range of \$30,000 to \$36,000 dollars to properly transport, treat and dispose and/or recycle such waste.

Other Relevant Factors Considered

- The sulfuric acid discharge is a one-time discharge.
- The discharge constituted a major violation of Waste Discharge Requirements, but does not appear to threaten ground water.
- The discharge cannot be cleaned up as the sulfuric acid was neutralized when it was discharged into the Boric Acid Pond.

- Failure to report immediately to the Regional Board constitutes a major reporting violation.
- The facility has a good compliance record in response to Regional Board orders and requirements.

These facts were considered in determining the proposed administrative civil liability discussed below.

PROPOSED CIVIL LIABILITY

6. For the unauthorized discharge of waste, and the failure to report the adverse condition, the Regional Board may impose civil liability under the following Sections of the California Water Code.

§ 13265(c): in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs (3 days). The maximum liability is **\$15,000.00.**

§ 13268(c): in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs (29 days). The maximum liability is **\$145,000.00.**

7. The total maximum amount of administrative civil liability **\$160,000.00.** Pursuant to Section 13327 of the California Water Code, the Executive Officer of the R
Regional Board considered the following factors in determining the proposed amount of the administrative civil liability imposed.

- a) The nature, circumstances, extent, and gravity of the violation or violations;
- b) If the discharge is susceptible to cleanup or abatement;
- c) The degree of toxicity of the discharge;
- d) The violator's ability to pay;
- e) The effect on the violator's ability to continue business;
- f) Any voluntary cleanup efforts undertaken by the violator;
- g) Any prior history of violations;
- h) The degree of culpability;
- i) Any economic savings for the violator resulting from the violation; and
- j) Other matters as justice may require.

8. The Executive Officer of the Regional Board proposes that administrative civil liability be imposed on U.S. Borax in the amount of **\$105,000.00** (which includes staff costs.)

WAIVER OF HEARING

9. You may waive the right to a hearing. If you choose to waive the hearing, please check and sign the enclosed Waiver of Hearing form and return it with a cashier's check or money order for the amount of civil liability proposed in paragraph 8 above, by **May 7, 1998**, to the following address:

California Regional Water Quality Control Board
Lahontan Region
15428 Civic Dr., Ste 100
Victorville CA, 92392

Ordered by: _____ Dated: _____
HAROLD J. SINGER
EXECUTIVE OFFICER